

IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.

R.F.A. 299 of 1997.

Judgment reserved on 31.7.2007.

Date of Decision: 7th August, 2007.

H.P. Housing Board through Secretary-cum-Chief Engineer

..... Appellant

Vs

Shri Bikkar and others

.....Respondents.

Coram

The Hon'ble Mr. Justice Dev Darshan Sud, Judge.

Whether approved for reporting?¹

For the Petitioner: Mr. Bhupinder Gupta, Sr. Advocate, with Mr. Praneet Gupta, Advocate.

For the Respondents: Mr. Ramakant Sharma, Advocate, for respondent Nos. 1 and 2.

Mr. M.S. Chandel, Advocate General with Mr. Rajan Dewan, Addl. AG, for respondent Nos. 3 and 4.

Dev Darshan Sud, Judge.

The appellant has challenged the award made by the Land Acquisition Collector in Land Reference No. 1-NL/4 of 1994. The land of the respondents-claimants was acquired for the construction of housing

¹ Whether Reporters of Local Papers may be allowed to see the judgment?

colony by the appellant. Being dissatisfied with the award made by the Land Acquisition Collector, reference under Section 18 of the Land Acquisition Act (hereinafter referred to as 'the Act') was preferred by the claimants-respondents which was decided by the learned Reference Court, increasing the amount of compensation payable to the claimants/respondents.

Being aggrieved by the judgment of the learned Reference Court, the appellant has preferred the present appeal.

I have heard learned counsel for the parties and have gone through the record of the case. The appellant had prayed for permission to adduce additional evidence which prayer was allowed when the appeal was being heard on 30.7.2007 and Exts. R-A and R-B, certified copies of sale deed were allowed to be produced and read in evidence in support of the claim of the appellant. Learned counsel for the respondents-claimants did not want to lead any evidence in rebuttal.

Learned counsel for the appellant submits that the award is not in accordance with law and ignores the principles for determination of the fair and just compensation as provided for by the Act. It is also submitted that the learned Reference Court was not correct in ignoring the sale deeds Exts. R-A and R-B and placing reliance on the two sale deeds namely Exts. P-A and P-B, proved on the record by the respondents-claimants. It is submitted that the sale deeds Exts. R-A and R-B are *per se* admissible in evidence without producing the vendor and vendee of the sale transaction.

While determining the compensation payable, the learned Reference Court has taken into consideration Exts. R-A and R-B. The

Court holds that sale transactions evidenced by Exts. R-A and R.B cannot be used to determine the fair and just compensation as the Collector has awarded more compensation than what is contemplated by these two deeds. The learned Reference Court found as a fact that the award of the Collector awards Rs. 877/- per biswas whereas in Exts. R-A and R-B the rate is Rs. 500/- per biswas. I do not find anything illegal with the reasoning which has been given by the learned Reference Court. Section 25 of the Act provides:-

“..... The compensation awarded by the Court cannot be less than the amount awarded by the Collector under Section 11 of the Act.....”

In these circumstances, both the sale deeds relied upon by the appellant have rightly been rejected. There is no illegality in ignoring these two sale instances.

The appellant had produced on record sale deeds Exts. P-F and P-G, which were duly proved in evidence. Since the vendor and vendee of the other sale deeds were not produced those were rejected, as according to the learned Court, the bonafide nature of the transaction cannot be established by a mere reference to these deeds. The learned court, on a conspectus of the entirety of evidence oral and documentary awarded the compensation to the claimants-respondents in consonance with the principles of the Act. The appeal therefore is accordingly rejected. There shall be no order as to costs.

Learned counsel for the respondents submits that interest on the solatium has not been awarded by the learned Court which is not in accordance with law. Learned counsel submits that the interest is mandatory requirement under the Act which has not been awarded on the

amount of solatium. He places reliance of the decisions of the Hon'ble Supreme Court in **Sunder vs Union of India (2001) 7 SCC 211** and **Nagpur Improvement Trust vs. Vasantrao and others (2002) 7 SCC 657.** Learned counsel for the appellant submits that since no appeal has been filed by the respondents-claimants, this claim cannot be allowed to the claimants-respondents. I do not find any justification for not awarding the interest to the claimants, which is otherwise admissible in law as held by the Hon'ble Supreme Court. It is by now well settled that this Court by exercising powers under Order 41 Rule 33 of the Code of Civil Procedure can grant relief to the respondents to which they are otherwise entitled to but which has not been granted even though no appeal may have been filed. The grant of interest being mandatory requirement of the Act, the claimants-respondents are held entitled to this amount. The judgment of the learned Reference Court is accordingly modified. It is directed that the interest on solatium in accordance with law be paid to the claimants-respondents. The appeal is disposed of

7th August, 2007.
(cm)

(Dev Darshan Sud),
Judge.